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TO RUEHC/SECSTATE WASHDC 2214
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UNCLAS ANTANANARIVO 000187

SENSITIVE
SIPDIS

STATE FOR AF/E-MBEYZEROV
ADDIS ABABA FOR DYAMAMOTO
PRETORIA FOR RBROWN, HLALIME
PARIS FOR RKANEDA
LONDON FOR PLORD
BRUSSELS FOR DFRANCIS
USUN FOR RDICARLO, AWOLFF

E.O. 12958: N/A

TAGS: PGOV MA

SUBJECT: Engaging with the new Malagasy "Government"

¶1. (SBU) SUMMARY: Post seeks guidance from the department on an expected request for contact with the transition government of Andry Rajoelina (see paragraph 3). The transfer of power from the short-lived military directorate to another unnamed entity with Rajoelina as its president occurred Tuesday, and today Madagascar's High Constitutional Court (HCC) has ruled - outrageously but expectedly -- that it is constitutional. The Ambassador (among other diplomats) expects to be convoked very soon by the new government and requests Department guidance on this expected situation. In terms of how to respond to what was clearly an unconstitutional transfer of power, splits are already visible in the positions likely to be taken by the French, AU, UN, EU, Francophonie, and bilateral partners, which suggest a need for urgent coordination with other capitals/organizations. Informal translations of the founding documents of the new government are included in paras 6-8. END SUMMARY.

¶2. (SBU) ACTION REQUEST: Post requests urgent department guidance on how the Ambassador (or DCM) should respond to an expected, formal convocation from "President" Rajoelina, or members of his yet-to-be-named government. Note that media will almost certainly be present and that participation would confer, in public opinion, some sense of legitimacy on the new administration. On the other hand, failure to appear would almost certainly bring further condemnation on the United States and potentially endanger personnel and private citizens here by the supporters of the new regime who have little tolerance for international norms or comprehension of international law. Given the above, our recommendation is to appear, listen to what the Malagasy interlocutors have to say, take note initially with minimal comment, and make no public remarks for the time being.

¶3. (SBU) Divisions within local diplomatic corps. In light of yesterday's events and this morning's HCC ruling, it is likely that the Rajoelina's "High Transitional Authority" HTA Government soon will convoke members of the diplomatic corps in Antananarivo, individually or together. Ambassador Marquardt has already received a phone call from HTA "Minister of Finance" Benja Razafimahaleo expressing his desire to work with the United States and other international donors, to which he responded noncommittally. In a meeting among the diplomatic corps this morning, the French clearly signaled a willingness to hold their noses, praise the Malagasy for (so far) the absence of further violence during the ongoing transfer of power, and move on; the arrival this afternoon of new ambassador Jean-Marc Chataigner portends a felicitous French position via-a-vis TGV, in most observers' eyes. The EU expressed a strong preference in favor of re-establishing constitutionality, respecting human

rights, good governance, etc. - but admitted that their position would depend on coordination among member states (in which France will no doubt play a lead role). Ambassador Marquardt said that Washington is still reviewing the situation and that the USG would not get out in front of the process, but expressed the view that after two months of evoking the consequences of an unlawful solution, the international community cannot fail to react to the obviously unconstitutional outcome. Several COMs expressed their unconditional willingness to respond if Rajoelina calls them, but others remain hesitant given the tenuous legal situation, notwithstanding the HCC's endorsement, which was not unexpected. All ambassadors agreed on one thing: further statements or reactions should come from capitals and headquarters, not from embassies here, and they should not be rushed in the current tense climate.

14. (SBU) The AU (Special Envoy Ouedraoago) seems very flexible, as well as the Francophonie (Kodjo); their concerns seemed more aimed at having the right impact in Madagascar than in upholding principles; the Francophonie's position was closer to France's, and the AU seemed more concerned about practicalities than principles. Among the envoys, only the UN (Drame) expressed a strong position in support of consequences, and accompanying statements and talking points, for the extra-constitutional solution now in progress. In formulating a USG response to recent events, we recommend looking first to the African Union and the United Nations for their reactions. We also continue to believe that any formal declarations concerning the status of this new government and our reaction to the means by which it came to power should come from Washington, in prior coordination with the AU, UN, EU, Paris, and South Africa, as appropriate. As noted above, France is unlikely to be in favor of anything but a pragmatic response, given their significant presence here; indeed, TGV praised their position today - on no one else's -- on the public square - in part due to their having taken him in last week (with cover from the rest of us).

15. (SBU) Founding documents of the HTA government: as background, summary translations of the three key documents that have led to the formation of the new government follow. These documents include: A. the ordinance transferring power from former President Ravalomanana to a military directorate; B. the ordinance transferring power from the military directorate to Andry Rajoelina; and C. a letter from Rajoelina to the High Constitutional Court (HCC) requesting a judgment on the "validity" of these documents and the legalization of Rajoelina's control. Around noon, March 18 the HCC unsurprisingly announced its decision on this request by giving Rajoelina full authority at the head of the High Transitional Authority.

16. (U) Following is a summary translation of Ordinance 2009-01, in which then-President Ravalomanana transferred power to the Military Directorate.

Begin translated text

Republic of Madagascar
Presidency of the Republic
The President
Ordinance 2009-001 of March 17, 2009
Conferring full powers to a Military Directorate
The President of the Republic

Noting that the prevailing circumstances require the safeguarding of the higher interests of the nation;

Considering that the principle of continuity of the state constitutes a general legal principle with constitutional value;

Given the constitution, notably article 44 paragraph 1, which contains:

"The President of the Republic guarantees the respect of the Constitution. He is the guarantor of the indivisibility of the Republic. He is the guarantor, by his arbitrage, of the regular functioning of public powers, of national independence, and of territorial integrity. He guarantees the protection and respect of national sovereignty, both internally and externally. He is the guarantor of National Unity."

Orders:

Article 1: Full powers are given to a Military Directorate, headed by the oldest member of the highest rank of all armed forces. He is the President.

Article 2: The composition and organization of this Military Directorate are left to the President's discretion.

Article 3: The Military Directorate exercises cumulatively the functions of President of the Republic and those of the Prime Minister, which are granted to them by the Constitution.

Article 4: The Military Directorate has the following mission: Organize a national conference in order to discuss and elaborate eventual modifications to the Constitution;

Prepare revisions to the Electoral Code;

Prepare the law on political parties;

Organize elections in at least twenty four months;

The Military Directorate can take all other measures that it deems necessary in order to restore public order, and ensure an authentic national reconciliation permitting true economic and social development.

Article 5: For reasons of urgency, and conforming to the dispositions of article 4 of ordinance 62-041 from September 19, 1962 concerning the general dispositions of internal law and private international law, the current ordinance enters into effect immediately as soon as it has been posted or published by radio or television, independent from its publication in the official journal. It will be executed as law of the government.

Antananarivo, March 17, 2009

Marc RAVALOMANANA [Signature]

End translated text

¶ 7. (U) Following is a summary translation of Ordinance 2009-02, from the Military Directorate, transferring power to Andry Rajoelina.

Begin translated text

The President of the Military Directorate

Given the constitution,

Given Ordinance 2009-001 of March 17, 2009 conferring full power to a Military Directorate,

Orders:

Article 1: Full powers are given to Mr. Andry Rajoelina to manage the country, in place of the Military Directorate install by ordinance 2009-001 of March 17, 2009.

Article 2: He exercises the functions and attributions of President of the Republic, conforming to the dispositions of the constitution for a maximum period of 24 months.

Article 3: Mr. Andry Rajoelina has as his mission the organization of a transition regime towards a Fourth Republic, and to take all measures necessary to this end.

Article 4: For reasons of urgency, and conforming to the dispositions of article 4 of ordinance 62-041 from September 19, 1962 concerning the general dispositions of internal law and private international law, the current ordinance enters into effect immediately as soon as it has been posted or published by radio or television, independent from its publication in an official journal. It will be executed as law of the government.

Antananarivo, March 17, 2009

Vice Admiral Hyppolite RARISON RAMAROSON, President [Signature]

Major General Ranto RABARISOA, Member [Signature]
Major General Rivo RAZAFINDRALAMBO, Member [Signature]

End translated text

¶8. (U) Following is a summary translation of Rajoelina's request for a judgement on the validity of this ordinance, and of Ordinance 2009-01, in which then-President Ravalomanana transferred power to the Military Directorate.

Begin translated text:

President Andry Rajoelina
Villa 26, Residence of Ambatobe
TO
The President, Ladies and Gentlemen of the High Constitutional Court
Ambohidahy
Antananarivo, March 17, 2009

Mr. President,
Ladies and Gentlemen High Councilors,

I have the honor to send you two ordinances:

Ordinance 2009-001 from March 17, 2009 conferring full power to a Military Directorate.
Ordinance 2009-002 from March 17, 2009 transferring full powers to Mr. Andry Rajoelina

I would appreciate your certification of the validity of these two ordinances and to take appropriate action.

Mr. President, Ladies and Gentlemen High Councilors, please accept assurances of my highest consideration.
President Andry Nirina Rajoelina [Signature]

End translated text

MARQUARDT